

108TH CONGRESS
1ST SESSION

S. 393

To amend the Internal Revenue Code of 1986 to allow employers a credit against income tax with respect to employees who participate in the military reserve components and to allow a comparable credit for participating reserve component self-employed individuals, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 13, 2003

Mr. ALLEN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to allow employers a credit against income tax with respect to employees who participate in the military reserve components and to allow a comparable credit for participating reserve component self-employed individuals, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “____ Act of 2003”.

1 **SEC. 2. CREDIT FOR EMPLOYMENT OF RESERVE COMPO-**
 2 **NENT PERSONNEL.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-
 4 chapter A of chapter 1 of the Internal Revenue Code of
 5 1986 (relating to business-related credits) is amended by
 6 adding at the end the following new section:

7 **“SEC. 45G. RESERVE COMPONENT EMPLOYMENT CREDIT.**

8 “(a) GENERAL RULE.—For purposes of section 38,
 9 the reserve component employment credit determined
 10 under this section is an amount equal to the sum of—

11 “(1) the employment credit with respect to all
 12 qualified employees of the taxpayer, plus

13 “(2) the self-employment credit of a qualified
 14 self-employed taxpayer.

15 “(b) EMPLOYMENT CREDIT.—For purposes of this
 16 section—

17 “(1) IN GENERAL.—The employment credit
 18 with respect to a qualified employee of the taxpayer
 19 for any taxable year is equal to 100 percent of the
 20 excess, if any, of—

21 “(A) the qualified employee’s average daily
 22 qualified compensation for the taxable year,
 23 over

24 “(B) the average daily military pay and al-
 25 lowances received by the qualified employee
 26 during the taxable year,

1 while participating in qualified reserve component
 2 duty to the exclusion of the qualified employee's nor-
 3 mal employment duties for the number of days the
 4 qualified employee participates in qualified reserve
 5 component duty during the taxable year, including
 6 time spent in a travel status. The employment cred-
 7 it, with respect to all qualified employees, is equal
 8 to the sum of the employment credits for each quali-
 9 fied employee under this subsection.

10 “(2) AVERAGE DAILY QUALIFIED COMPENSA-
 11 TION AND AVERAGE DAILY MILITARY PAY AND AL-
 12 LOWANCES.—As used with respect to a qualified em-
 13 ployee—

14 “(A) the term ‘average daily qualified com-
 15 pensation’ means the qualified compensation of
 16 the qualified employee for the taxable year di-
 17 vided by the difference between—

18 “(i) 365, and

19 “(ii) the number of days the qualified
 20 employee participates in qualified reserve
 21 component duty during the taxable year,
 22 including time spent in a travel status, and

23 “(B) the term ‘average daily military pay
 24 and allowances’ means—

1 “(i) the amount paid to the qualified
 2 employee during the taxable year as mili-
 3 tary pay and allowances on account of the
 4 qualified employee’s participation in quali-
 5 fied reserve component duty, divided by

6 “(ii) the total number of days the
 7 qualified employee participates in qualified
 8 reserve component duty, including time
 9 spent in travel status.

10 “(3) QUALIFIED COMPENSATION.—When used
 11 with respect to the compensation paid or that would
 12 have been paid to a qualified employee for any pe-
 13 riod during which the qualified employee participates
 14 in qualified reserve component duty, the term ‘quali-
 15 fied compensation’ means—

16 “(A) compensation which is normally con-
 17 tingent on the qualified employee’s presence for
 18 work and which would be deductible from the
 19 taxpayer’s gross income under section 162(a)(1)
 20 if the qualified employee were present and re-
 21 ceiving such compensation,

22 “(B) compensation which is not character-
 23 ized by the taxpayer as vacation or holiday pay,
 24 or as sick leave or pay, or as any other form
 25 of pay for a nonspecific leave of absence, and

1 with respect to which the number of days the
2 qualified employee participates in qualified re-
3 serve component duty does not result in any re-
4 duction in the amount of vacation time, sick
5 leave, or other nonspecific leave previously cred-
6 ited to or earned by the qualified employee, and

7 “(C) group health plan costs (if any) with
8 respect to the qualified employee.

9 “(4) QUALIFIED EMPLOYEE.—The term ‘quali-
10 fied employee’ means a person who—

11 “(A) has been an employee of the taxpayer
12 for the 21-day period immediately preceding the
13 period during which the employee participates
14 in qualified reserve component duty, and

15 “(B) is a member of the Ready Reserve of
16 a reserve component of an Armed Force of the
17 United States as defined in sections 10142 and
18 10101 of title 10, United States Code.

19 “(c) SELF-EMPLOYMENT CREDIT.—

20 “(1) IN GENERAL.—The self-employment credit
21 of a qualified self-employed taxpayer for any taxable
22 year is equal to 100 percent of the excess, if any,
23 of—

1 “(A) the self-employed taxpayer’s average
 2 daily self-employment income for the taxable
 3 year over

4 “(B) the average daily military pay and al-
 5 lowances received by the taxpayer during the
 6 taxable year, while participating in qualified re-
 7 serve component duty to the exclusion of the
 8 taxpayer’s normal self-employment duties for
 9 the number of days the taxpayer participates in
 10 qualified reserve component duty during the
 11 taxable year, including time spent in a travel
 12 status.

13 “(2) AVERAGE DAILY SELF-EMPLOYMENT IN-
 14 COME AND AVERAGE DAILY MILITARY PAY AND AL-
 15 LOWANCES.—As used with respect to a self-em-
 16 ployed taxpayer—

17 “(A) the term ‘average daily self-employ-
 18 ment income’ means the self-employment in-
 19 come (as defined in section 1402) of the tax-
 20 payer for the taxable year plus the amount paid
 21 for insurance which constitutes medical care for
 22 the taxpayer for such year (within the meaning
 23 of section 162(l)) divided by the difference be-
 24 tween—

25 “(i) 365, and

1 “(ii) the number of days the taxpayer
 2 participates in qualified reserve component
 3 duty during the taxable year, including
 4 time spent in a travel status, and

5 “(B) the term ‘average daily military pay
 6 and allowances’ means—

7 “(i) the amount paid to the taxpayer
 8 during the taxable year as military pay
 9 and allowances on account of the tax-
 10 payer’s participation in qualified reserve
 11 component duty, divided by

12 “(ii) the total number of days the tax-
 13 payer participates in qualified reserve com-
 14 ponent duty, including time spent in travel
 15 status.

16 “(3) QUALIFIED SELF-EMPLOYED TAXPAYER.—
 17 The term ‘qualified self-employed taxpayer’ means a
 18 taxpayer who—

19 “(A) has net earnings from self-employ-
 20 ment (as defined in section 1402) for the tax-
 21 able year, and

22 “(B) is a member of the Ready Reserve of
 23 a reserve component of an Armed Force of the
 24 United States.

1 “(d) CREDIT IN ADDITION TO DEDUCTION.—The
 2 employment credit provided in this section is in addition
 3 to any deduction otherwise allowable with respect to com-
 4 pensation actually paid to a qualified employee during any
 5 period the qualified employee participates in qualified re-
 6 serve component duty to the exclusion of normal employ-
 7 ment duties.

8 “(e) LIMITATIONS.—

9 “(1) DISALLOWANCE FOR FAILURE TO COMPLY
 10 WITH EMPLOYMENT OR REEMPLOYMENT RIGHTS OF
 11 MEMBERS OF THE RESERVE COMPONENTS OF THE
 12 ARMED FORCES OF THE UNITED STATES.—No credit
 13 shall be allowed under subsection (a) to a taxpayer
 14 for—

15 “(A) any taxable year in which the tax-
 16 payer is under a final order, judgment, or other
 17 process issued or required by a district court of
 18 the United States under section 4323 of title 38
 19 of the United States Code with respect to a vio-
 20 lation of chapter 43 of such title, and

21 “(B) the 2 succeeding taxable years.

22 “(2) DISALLOWANCE WITH RESPECT TO PER-
 23 SONS ORDERED TO ACTIVE DUTY FOR TRAINING.—
 24 No credit shall be allowed under subsection (a) to a
 25 taxpayer with respect to any period for which the

1 person on whose behalf the credit would otherwise be
 2 allowable is called or ordered to active duty for any
 3 of the following types of duty:

4 “(A) active duty for training under any
 5 provision of title 10, United States Code,

6 “(B) training at encampments, maneuvers,
 7 outdoor target practice, or other exercises under
 8 chapter 5 of title 32, United States Code, or

9 “(C) full-time National Guard duty, as de-
 10 fined in section 101(d)(5) of title 10, United
 11 States Code.

12 “(f) GENERAL DEFINITIONS AND SPECIAL RULES.—

13 “(1) MILITARY PAY AND ALLOWANCES.—The
 14 term ‘military pay’ means pay as that term is de-
 15 fined in section 101(21) of title 37, United States
 16 Code, and the term ‘allowances’ means the allow-
 17 ances payable to a member of the Armed Forces of
 18 the United States under chapter 7 of that title.

19 “(2) QUALIFIED RESERVE COMPONENT
 20 DUTY.—The term ‘qualified reserve component duty’
 21 includes only active duty performed, as designated in
 22 the reservist’s military orders, in support of a con-
 23 tingency operation as defined in section 101(a)(13)
 24 of title 10, United States Code.

1 “(3) NORMAL EMPLOYMENT AND SELF-EM-
2 PLOYMENT DUTIES.—A person shall be deemed to
3 be participating in qualified reserve component duty
4 to the exclusion of normal employment or self-em-
5 ployment duties if the person does not engage in or
6 undertake any substantial activity related to the per-
7 son’s normal employment or self-employment duties
8 while participating in qualified reserve component
9 duty unless in an authorized leave status or other
10 authorized absence from military duties. If a person
11 engages in or undertakes any substantial activity re-
12 lated to the person’s normal employment or self-em-
13 ployment duties at any time while participating in a
14 period of qualified reserve component duty, unless
15 during a period of authorized leave or other author-
16 ized absence from military duties, the person shall
17 be deemed to have engaged in or undertaken such
18 activity for the entire period of qualified reserve
19 component duty.

20 “(4) CERTAIN RULES TO APPLY.—Rules similar
21 to the rules of subsections (c), (d), and (e) of section
22 52 shall apply for purposes of this section.”.

23 (b) CONFORMING AMENDMENT.—Section 38(b) of
24 the Internal Revenue Code of 1986 (relating to general
25 business credit) is amended—

1 (1) by striking “plus” at the end of paragraph
2 (14),

3 (2) by striking the period at the end of para-
4 graph (15) and inserting “, plus”, and

5 (3) by adding at the end the following new
6 paragraph:

7 “(16) the reserve component employment credit
8 determined under section 45G(a).”.

9 (c) CLERICAL AMENDMENT.—The table of sections
10 for subpart D of part IV of subchapter A of chapter 1
11 of the Internal Revenue Code of 1986 is amended by in-
12 serting after the item relating to section 45F the following
13 new item:

 “Sec. 45G. Reserve component employment credit.”.

14 (d) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years beginning after
16 December 31, 2002.

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